

REMARKS/ARGUMENTS

The Applicant has carefully considered this application in connection with the Examiner's Action and respectfully requests reconsideration of this application in view of the foregoing amendment and the following remarks.

The Applicant originally submitted Claims 1-20 in the application. The Applicant has previously amended Claims 2, 7, 17. The Applicant has amended Claims 1 and 11 herein and has not added or canceled any claims. Accordingly, Claims 1-20 are currently pending in the application.

I. Rejection of Claims 1-7, 9-17, 19 and 20 under 35 U.S.C. §102

The Examiner has rejected Claims 1-7, 9-17, 19 and 20 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,151,149 to Rybicki, *et al.* (Rybicki). As the Examiner is no doubt aware, anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference; the disclosed elements must either be disclosed expressly or inherently and must be arranged as in the rejected claims.

Rybicki discloses a method and apparatus for encoding data into a pulse pattern. The encoding process utilizes encoding conventions to ensure that header data and data are encoded in distinguishing manners so that both can be accurately decoded. The encoding in Rybicki is directed to IR coding utilizing commercial LEDs and LRDs. Rybicki does not disclose the encoding of data that can be transferred over a network, such as the Internet. Thus, Rybicki does

not include each and every element of the present invention and is not an anticipating reference with respect to independent Claims 1 and 11. Inasmuch as Claims 2-7, 9-10, 12-17 and 19-20 are each respectively dependent on either Claim 1 or Claim 11, Rybicki also does not include each and every element of such claims and is not an anticipating reference with respect to these claims either. Accordingly, the Applicant respectfully requests the Examiner to withdraw the §102 rejection with respect to these claims.

II. Rejection of Claims 6 and 16 under 35 U.S.C. §103

The Examiner has rejected Claims 6 and 16 under 35 U.S.C. §103(a) as being unpatentable over Rybicki. As the Examiner is no doubt aware, determination of obviousness requires consideration of the invention considered as a whole; the inquiry is not whether each element exists in the prior art, but whether the prior art made obvious the invention as a whole. Furthermore, there must be some suggestion or teaching in the art that would motivate one of ordinary skill in the art to arrive at the claimed invention; a reference that teaches away from a claimed invention strongly indicates nonobviousness.

Moreover, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure.

The encoding in Rybicki is directed to IR coding utilizing commercial LEDs and LRDs. As indicated above, Rybicki does not disclose the encoding of data that can be transferred over a network, such as the Internet. Nor does Rybicki suggest or teach that data can be encoded in the manner described therein utilizing any other encoding means than IR. Thus, Rybicki fails to teach or suggest the invention recited in independent Claims 1 and 11 as well as Claims 6 and 16, their dependent claims, when considered as a whole. Claims 6 and 16 are therefore not obvious in view of Rybicki.

In view of the foregoing remarks, the cited references do not support the Examiner's rejection of Claims 1 and 16 under 35 U.S.C. §103(a). The Applicant therefore respectfully requests the Examiner to withdraw the rejection.

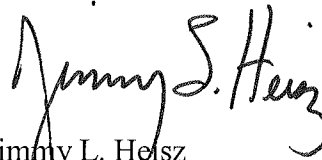
III. Conclusion

In view of the foregoing amendment and remarks, the Applicant now sees all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicits a Notice of Allowance for Claims 1-20.

The Applicant requests the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

HITT GAINES, PC

A handwritten signature in black ink, appearing to read "Jimmy L. Helsz". The signature is stylized with a large, looped "H" and a cursive "L".

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